IS REPUTATION DAMAGE INSURABLE IN CYBER INSURANCE FOR LAW FIRMS?

A data breach, network security or cyber event could render client or proprietary records unreadable, leave networks unavailable, expose sensitive data or transmit malware to others. In addition to exposing a law firm to increased costs of doing business, potential liabilities and regulatory scrutiny, a data breach, network security or cyber event could have an adverse impact on a law firm's process, service, reputation, results of operations and financial condition.

Possibly one of the biggest "cyber" exposures a law firm faces is to its reputation and there is a common misunderstanding that reputational damage cannot be insured in a cyber policy. This is not entirely correct, reputation loss can be insured when framed within the prerequisites of insurability, i.e., that loss is a) fortuitous, b) calculable & c) definite. Loss arising from a data breach, network security or cyber event can certainly be fortuitous; the main challenges to insurability are therefore 1) agreeing a monetary value to reputation and 2) agreeing a period of loss which is definite. There are cyber policies which now provide coverage for loss of income arising out of adverse publicity following a data breach.

How do insurers establish an insurable value to reputation?

Reputation is subject to multiple stakeholders so it is difficult to track, let alone define or quantify. For example, how would you assign a cost to existing customer relationships or the inability to form new customer relationships? How would you assign a cost to the loss of key staff or inability to recruit employees? Yet damage to reputation ultimately can carry demonstrable financial costs which we can identify for insurance purposes, such as:

- External costs including legal or public relations advice.
- Cost of crisis communications in response to adverse publicity - damage does not always result from the initial crisis, but from how well the company responds to it. Data loss does not have to cause permanent harm to a law firm's reputation.
- Loss of clientele represented by loss of income/profit.

Certain costs which are not calculable will not be insured. Intangible costs such as: opportunity, goodwill, future lost business, etc. are contentious coverage issues. However, foreseeable lost revenue *is* insurable, for example: a client may agree to a schedule of payments or a predetermined percentage or recovery. In the event a firm loses a case during an engagement, the future income is calculable. If a case is continued with another firm successfully, there is a good chance of calculating that recovery and the fee opportunity lost. Underwriters are very clear that they are not providing coverage unless there is evidential proof but where there is, they will insure committed revenue streams.

When considered against a back-drop of fixed or contingent fees and “no-win-no pay” business models, in addition to the dependency of boutique practices reliant upon two or three large clients, the importance of this coverage cannot be underestimated.

How do insurers establish reputation loss is “definite” i.e. that takes place at a known time, in a known place, and from a known cause?

Trust and confidence can return naturally with time so it is imperative to agree with underwriters on an appropriate period of loss, which shows an agreed trigger and specific end. The period of loss is negotiable, potentially six months, commenced by a defined trigger such as the first appearance of adverse publicity about a data breach, network security or cyber event suffered by an insured firm.

How is reputation loss of income adjusted?

The value of an asset, good or service can change over time due to numerous factors. For example, profit fluctuates due to multiple influencing causes therefore, to adjust a reputation harm loss of income event, a forensic accountant is often retained. They will analyse, interpret, summarise and present complex financial and business related issues in a manner which is both understandable and properly supported. When a business interruption expert works with an insured they will quickly work to identify the macro and micro economic factors which act as “noise” around revenue fluctuation and focus upon the true impact of the covered risk. These techniques are actually well developed by business interruption experts in other traditional classes of insurance, but are now being applied to different loss scenarios.

How can Cyber Insurance for Law Firms help?

There’s no such thing as absolute network security, accidents will happen and if someone is motivated to circumvent or break security measures they will - the sophistication and targeted nature of attacks continue to increase and serious hackers may have unlimited time. An appreciation of the “threat from within” as well as the external threat should always be appreciated in a service sector that retains a volume of valuable confidential information. Cyber Insurance can provide an important supplement to risk management.

For further information and to learn more please contact your local broker who will be able to get in contact with Lyndsey Bauer Cyber & Network Security Practice Leader at Paragon International Insurance Brokers Ltd.